

R.L.M. asks the Utah Labor Commission to review Administrative Law Judge Sessions' denial of Robert L. M.'s claim for disability benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

On January 7, 2002, Mr. M. filed an application with the Commission to compel Smead Manufacturing and its workers' compensation insurance carrier, Indemnity Insurance (referred to jointly as "Smead" hereafter), to pay medical expenses and temporary total compensation for back and shoulder injuries Mr. M. suffered while working for Smead on February 11, 2000.

On March 10, 2003, Judge Eblen held an evidentiary hearing on Mr. M.'s claim. On December 6, 2003, Mr. M. filed an amended application to add claims for permanent partial disability compensation and permanent total disability compensation to his original claims.

On December 31, 2003, Judge Eblen appointed a panel to consider the medical aspects of Mr. M.'s claim. The panel submitted its report to Judge Eblen on February 6, 2004. On July 26, 2004, Judge Eblen issued her final decision adopting the panel's findings and, on that basis, denied Mr. M.'s claim for medical expenses. Judge Eblen's decision did not address Mr. M.'s claims for disability compensation.

Mr. M. moved for Commission review of Judge Eblen's decision on the grounds Judge Eblen had failed to adopt certain parts of the panel's opinion and had failed to obtain clarification of other parts of the opinion. Mr. M. also pointed out that Judge Eblen's decision had not resolved the pending claims for disability compensation. On February 28, 2005, the Commission affirmed Judge Eblen's decision denying medical expenses. The Commission remanded Mr. M.'s claims for disability compensation to the Adjudication Division for resolution.

Because Judge Eblen was no longer with the Commission, Judge Sessions assumed responsibility for adjudicating Mr. M.'s disability claims. In a decision issued March 23, 2005, Judge Sessions found that Mr. M.'s work accident had temporarily aggravated a preexisting back condition. On that basis, Judge Sessions awarded temporary total disability compensation to Mr. M. for the period between February 11 and March 15, 2000. Judge Sessions denied Mr. M.'s claim for permanent total disability compensation on the grounds the work accident did not cause Mr. M.'s ongoing inability to work.

Mr. M. then filed another motion for review with the Commission in which he renewed his original objections to Judge Eblen's decision and raised the following additional challenges to Judge Sessions' decision: 1) Mr. M.'s objections to the medical panel report were improperly denied; 2) the work accident at Smead in February 2000 was the direct cause of his permanent total disability;

and 3) denial of Mr. M.'s claim for permanent total disability compensation constitutes "unconstitutional age discrimination."

FINDINGS OF FACT

The Commission reaffirms Judge Eblen's findings of fact. The Commission also adopts Judge Sessions' findings of fact. These facts may be summarized as follows.

Mr. M. suffered from extensive degeneration of his thoracic and lumbar spine. Then, as he was on his way to work on February 11, 2000, he slipped and fell on ice in Smead's parking lot. This accident temporarily aggravated his preexisting spinal problems. Nevertheless, Mr. M. worked as scheduled that day and thereafter, with only a few absences from work.

About a week after the accident, Mr. M. sought medical attention for continuing pain. He received medical care and was released to continue working.¹ By March 15, 2000, he had recovered from the effects of the accident and returned to the same baseline physical condition that had existed prior to the accident.

Several months later, Mr. M.'s underlying spinal condition flared up again, but not as a result of his work accident at Smead. Mr. M. underwent spinal surgery to treat his preexisting spinal condition. The surgery was not necessitated by the accident at Smead.

DISCUSSION AND CONCLUSION OF LAW

Mr. M.'s objections to the medical panel report. Mr. M. contends that Judge Eblen should have asked the following specific question to the medical panel: "Would the surgery performed by Dr. Gauvin have been necessary when it was performed had the industrial accident of February 11, 2000, not occurred?"

The Commission notes that Mr. M. had an advance opportunity to review Judge Eblen's questions to the panel but failed to suggest inclusion of the question he now argues was essential. It was not until the panel had issued an opinion unfavorable to Mr. M. that he challenged the adequacy of the questions posed to the panel. But in any event, the Commission is satisfied that the panel has fully and correctly explained the nature of Mr. M.'s condition. The Commission is also persuaded by the panel's report and other corroborating medical opinion that there is no causal connection between Mr. M.'s accident at Smead and his underlying degenerative spinal condition. Likewise, the Commission is persuaded that Mr. M.'s subsequent surgery was entirely for the purpose of treating his underlying degenerative spinal condition and was unrelated to the work accident. The Commission therefore rejects Mr. M.'s challenge to the medical panel's report.

¹ Judge Sessions awarded temporary total disability compensation for the period of February 11 to March 15, 2000, even though Mr. M. was working during most of that time. Even though the facts do not appear to support this award, Smead has not raised the matter as an issue for review. Consequently, the Commission will not consider the issue further.

Mr. M.'s work accident at Smead as the direct cause of his alleged permanent total disability. Mr. M. contends he is entitled to permanent and total disability benefits in connection with his accident at Smead. In order to qualify for workers' compensation benefits under the Utah Workers' Compensation Act, he must meet each of the several tests set out in § 34A-2-413(1) of the Act, including the requirement that "the industrial accident . . . was the direct cause of the employee's permanent total disability."

Assuming for purposes of discussion that Mr. M. is, in fact, permanently and totally disabled, the Commission finds no reason to conclude that his accident at Smead was the "direct cause" of such disability. As already noted above, the accident at Smead caused only a temporary aggravation of Mr. M.'s underlying degenerative spine condition. Within a few weeks, Mr. M. had recovered to his pre-accident status and was continuing to work for Smead. The Commission therefore concludes that Mr. M. has not satisfied §34A-2-413(1)'s requirements for permanent total disability compensation.

Age discrimination. Finally, Mr. M. argues that "subjecting older workers to a different standard than that applied to younger workers violates Mr. M.'s Constitutional right to equal protection." Mr. M. has not supported this contention with any appreciable legal analysis, other than to cite *Ressor v. Montana State Fund*, a recent decision of the Montana Supreme Court. Having reviewed the *Ressor* decision, the Commission finds it inapposite to the circumstances of Mr. M.'s claim. Contrary to Mr. M.'s assertion, the Commission has applied the same standards to Mr. M.'s claim that it would apply to any other workers' compensation claim.

ORDER

The Commission reaffirms its previous decision in this matter, affirms Judge Sessions' decision, and denies Mr. M.'s motion for review. It is so ordered.

Dated this 7th day of October, 2005.

R. Lee Ellertson, Commissioner